

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO.370 of 2004

Devi Prasad son of Sri Nathi Ram Goswami
Resident of Jakhand, Patti-Barjula district
Tehri Garhwal

.....Applicant

VERSUS

1. State of Uttaranchal
2. Smt. Godambari Devi wife of Devi Prasad
Resident of village Pilkhi Patti-Faigul
District Tehri garhwal
3. Master Suraj son of Sri Devi Prasad
Aged about 7 years through natural
guardian/mother Smt. Godambari Devi
Resident of village Pilkhi Patti-Faigul
District Tehri garhwal

Respondents

Hon'ble J.C.S. Rawat, J.

1. Heard the learned counsel for the parties and perused the record.

2. This is a petition u/s 482 Cr.P.C. for quashing the order dated 6.8.2004 passed by the Sessions Judge, Tehri in criminal revision no.16 of 2004.

3. The brief facts are that Smt.Godambari Devi wife moved on application u/s 125 Cr.P.C. before the Judicial Magistrate for seeking maintenance for herself as well as her minor son against the applicant-husband an amount of Rs.3000/- per month. It was alleged in the application that after the marriage with the applicant, he treated her with cruelty and deserted her alongwith minor son from his house. Since then the

wife is living with her parents. It was further alleged that she was unable to maintain herself. It was alleged that the applicant-husband is a pharmacist in Health Department and is getting a salary of Rs.8000/- per month.

4. The applicant husband contested the application and in his written statement he alleged that the application has been filed on frivolous grounds. He denied the allegations of the respondent-wife that she was forced to leave his house and he never committed cruelty upon her. The wife herself has deserted him on her own accord from his company. The husband applicant further alleged that she is not entitled for any maintenance. The applicant-husband admitted that he is a pharmacist in health department but he has no other source of income except the salary from which he has to maintain his parents. The application is liable to be dismissed.

5. The learned trial court after hearing the parties rejected the application u/s 125 Cr.P.C. against which a revision was preferred before the learned Sessions Judge. The learned Sessions vide order dated 6.8.2004 allowed the revision and directed the trial court to decide the application afresh by appreciating the evidence in the light of the observations made in the body of the judgment. The learned revisional court held that the trial court has not discussed the evidence and pleadings of both the parties. It was further held that the trial court has not given any findings regarding

the material ingredients of the provisions of section 125 Cr.P.C.

6. I have gone through the judgment of the revisional court and also the trial court. The trial court has not given findings with regard to the essential ingredients as enumerated u/s 125 Cr.P.C. The learned revisional court has rightly come to the conclusion that the case requires to be remanded back to the trial court for deciding the application afresh. I am completely in agreement with the findings of the revisional court that the trial court should have decide the question as to whether the respondent wife was unable to maintain herself. Thereafter the trial court should have decided as to whether any cruelty was committed upon her as alleged by the wife or the trial court should have also decided the allegations of the applicant as to whether the wife left the house of the husband applicant with her own accord. The learned trial court should have decided the factum of income of the applicant husband and thereafter he should have come to the conclusion as to whether the application u/s 125 Cr.P.C. is liable to be allowed or dismissed. While deciding the above facts the trial court should have taken into consideration the evidence on record. The trial court has erred in rejecting the application without discussing the evidence on record and the essential ingredients of section 125 Cr.P.C,. As such the order dated 6.8.2004 passed by the learned Sessions Judge is just and proper.

7. The application u/s 482 Cr.P.C. devoids of merit and is dismissed.

(J. C. S. Rawat, J.)

Dated 02.08.2005